

In the Asylum and Immigration Tribunal

Appeal No:HX/00101/2005

THE IMMIGRATION ACTS

Heard at SURBITON
On 21st April 2005

Determination Promulgated

09 MAY 2005
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Before

Immigration Judge R J MANUELL

Between

MR BESNIK ZENELI

Appellant

and

SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent

Representation:

For the Appellant:

Mr J Doerfel, Counsel

For the Respondent:

Ms A Pos, Home Office Presenting Officer

DETERMINATION AND REASONS

A. Entry History

1. The Appellant is a national of Serbia and Montenegro, the former Federal Republic of Yugoslavia, from the region known as the Preshevo Valley. He was born on 8th May 1983, and hence is presently 22 years of age. Accompanied by his wife Mrs Anila Zeneli ("Mrs Zeneli"), he entered the United Kingdom illegally on 7th May 2002 and claimed asylum on 8th May 2002.

B. Procedural History

2. The Appellant was required to file a Statement of Evidence Form, to which he annexed a witness statement on the document's return. He was interviewed on 13th June 2002. By letter dated 4th July 2002, the Secretary of State refused his claim to asylum under Paragraph 336 of HC395 (as amended). Removal Directions to FRY (now Serbia and Montenegro) were made, dated 5th July 2002.
3. The Appellant instructed solicitors, who served Notice of Appeal under Section 69(5) of the Immigration and Asylum Act 1999 on his behalf. The One Stop Notice procedure applied. Directions were subsequently made by the appellate authority which were not complied with by the Appellant, in that there was no witness statement for Mrs Zeneli and the Appellant's objective evidence was not fully indexed.
4. Unfortunately the Appellant's asylum file was not linked by the Respondent with that of the Appellant's wife Mrs Zeneli, so that these related appeals were not heard together as they plainly should have been. The Respondent deserves severe criticism for that and also for the absurd and inordinate delay in forwarding the Appellant's appeal to the Asylum and Immigration Tribunal's predecessor body, the Immigration Appellate Authority. Mrs Zeneli's appeal was heard by Mr P O'Brien, Adjudicator, at Taylor House on 14th November 2002. He dismissed Mrs Zeneli's appeal in his determination promulgated on 9th December 2002. Mrs Zeneli's file, including Mr O'Brien's determination, has been made available to the tribunal for reference, as the parties are aware.

C. The Law:

5. The 1951 UN Geneva Convention (as amended by the New York Protocol in 1967: "the Refugee Convention") provides that the term "refugee" should apply to any person who, inter alia, owing to a well-founded fear of being persecuted for reasons of

race, religion, nationality, membership of a particular social group or political opinion is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country.

6. The burden of proof is upon the Appellant. In determining this appeal I have applied the lower standard of proof set out in **Sivakumaran** [1998] Imm AR 147 (a reasonable degree of likelihood). In considering what may constitute persecution, I am guided by the decisions in **Ravichandran** [1996] Imm AR 97, **Kajema** [1997] Imm AR 137 and **Jonah** [1985] Imm AR 7.
7. For an asylum appeal to succeed, there must be demonstrated a reasonable degree of likelihood that the Appellant would be persecuted for a Refugee Convention reason if returned to his/her own country: the matter has to be determined objectively by reference to the circumstances currently prevailing there. I therefore look at the matter as of now.
8. In determining this appeal, I have reminded myself that Lord Justice Simon Brown (as he then was) stated in the case of **Sandrillingham** [1996] Imm AR 97 that "The question whether someone is at risk of persecution for a [Refugee] Convention reason should be looked at in the round and all the relevant circumstances brought into account".
9. In **Thirugnanasampantner** [1995] Imm AR 425, it was held that it did not automatically follow that evidence of ill treatment in the past proves a well-founded fear of persecution in the future.
10. Since 2nd October 2000, the commencement date of the Human Rights Act 1998, public authorities (including the appellate authority) may not act in a way which is incompatible with the European Convention on Human Rights and the appellate authority must take into account the body of material commonly known by the convenient term of "Strasbourg jurisprudence".

D. The Evidence

11. The Appellant gave his evidence in Albanian, interpreted for the tribunal. He confirmed as true and adopted as his evidence in chief his witness statements dated 22nd May 2002 and 8th February 2005, to which I refer. The Appellant chose to give his evidence in the absence of his wife, who his counsel said was unaware of some parts of it.
12. Much of the Appellant's evidence was highly personal in nature, and thus the following summary of his written evidence is much abbreviated. (Where necessary I have provided paragraph

references to the first witness statement.) The Appellant said that he was an ethnic Rom from Rahovice, Presheve in the Preshevo Valley, where he had lived with his parents. Roma people were in a minority in his village and the Appellant left school early rather than endure anti-Roma taunts. The Appellant helped his late father, a blacksmith, in his shop. The Appellant also worked as a drummer in a musical group, which is how he met his wife, who is an ethnic Albanian.

13. In June 2000 there was conflict between the ethnic Albanians and the Serbians in the Preshevo Valley region. The Liberation Army of Presheva, Medvegja and Bujanovc was formed (usually and here abbreviated as "UCPMB") but the Appellant was not a participant. Nevertheless, on 30th July 2000, the Appellant was seized and interrogated by Serbian soldiers about the UCPMB. The Appellant said he knew nothing, but he was taken to the military barracks in Rahovice. He was forced to help the Serbian soldiers, against his will. He was made to search and burn houses, and on occasions even to bury wounded UCPMB soldiers alive.
14. The Appellant was not badly treated and he was allowed to see his family every 10 days. He was given food to take to them. His family were pleased to see him, but not so the Albanian families in his village who would not speak to him. The Appellant was allowed to stay overnight with his family, but always returned because he was afraid that otherwise he would be killed and his family would be in danger. His family tried to convince him to leave the Serbians but it was not as easy as that.
15. In May 2001, there was a ceasefire and the Appellant was allowed to go home. The police took over control of public order and people returned to his village. The Appellant, however, was afraid as he received threats. He spent the majority of his time with his uncle in Muhovc, visiting his family occasionally but rarely visiting his late father's workshop. He sought help from the police but they said there was nothing they could do for him.
16. On 10th November 2001, the Serbian police came to his late father's workshop. The Appellant was there at the time. He was taken away, as some policemen had been killed and they wanted the Appellant to help them catch the perpetrators. The police thought that the Appellant might have heard something from the Albanians. He was held for 6 hours against his will, during which he was interrogated and kicked. Then he was released but went home scared as the police wanted to keep in contact with him.

17. The Appellant said he continued to move around so that he would not be identified. His wife (then his girlfriend) had problems too, but he knew only that she had been tortured, ill treated and threatened.
18. On 9th April 2002, the Appellant was again arrested at his father's workshop. He was detained for 2 weeks in Presheve. He was held in a special cell by a high ranking officer, who told his colleagues that he was interrogating the Appellant but in fact the officer was sexually assaulting him. The Appellant said the officer was "obviously homosexual". The Appellant's full account is set out at paragraphs 45 to 49 of his first witness statement. He said his ordeal included repeated violent rape for 11 of 13 days.
19. The Appellant returned home, but the house had been burnt down, he thought by Albanians. He went to his father's workshop and found his father had been hanged, many days ago. The Appellant went to his uncle's house, where he found his mother. He contacted his (future) wife and informed her of what happened. He buried his father and found an agent (to whom €5,500 was paid). On 26th April 2002 he married Mrs Zeneli. They then fled overland to the United Kingdom, and claimed asylum.
20. The Appellant feared he would be at risk as a Rom, and because Mrs Zeneli was Albanian and mixed marriages were no longer acceptable in Serbia and Montenegro. He would face revenge attacks. He was identifiable as Roma because of his appearance, language and accent. He has been receiving attention for his psychological problems since his arrival in the United Kingdom and had suicidal thoughts.
21. The Appellant produced 2 medical reports concerning the himself, to both of which I refer. The first report, prepared by Dr E Aldouri, Consultant Psychiatrist, of The Priory Hospital North London, The Bourne, Southgate, London N14 6RA, and dated 2nd September 2002, diagnosed Post Traumatic Stress Disorder. Dr Aldouri said that the symptoms "will take several months to recover" and the Appellant might require professional help. The second report, prepared by Dr J Hajioff, Consultant Psychiatrist, of Albany Lodge, Church Crescent, St Albans AL3 5JF, and dated 24th January 2005, diagnosed Post Traumatic Stress Disorder and depression. He recommended that the Appellant continue his anti depressant medication and counselling.
22. In his oral evidence, the Appellant recited much that was in his witness statement and required repeated direction towards new material. He said that he had last seen his mother on 1st May 2002 and had had no contact with her since then. He had

written but had received no reply. He thought she might be dead, killed by Albanian extremist groups who sought revenge for his work for the Serbian military. The Appellant would not receive protection on return because the police were not interested in Roma people.

23. The Appellant said that he felt tired and unwell. He took sleeping tablets and anti depressants. He had attended counselling but his English had not been good enough to explain things. He was, however, waiting for a date for a new course of counselling.
24. Cross-examined, the Appellant was asked why he thought that the Serbian police asked him about the UCPMB. He replied that perhaps they thought he knew something, as the Serbians were using the Roma for their cause. He said he had worked for the Serbians for a year but had not left because he had been frightened, was very young and did not know where to go. He agreed he had stayed for a year after he had stopped working for the Serbians. He had then hidden from the Albanians who knew he had worked for the Serbians.
25. The Appellant said that he had not reported the atrocities he had suffered during his detention (9th April 2002 to 21st April 2002) to because he did not trust anyone. He had not sought any medical treatment in Serbia and Montenegro. He had married 3 or 4 days after his release. He insisted that his account was true.
26. The Appellant's wife, Mrs Zeneli, gave evidence on the Appellant's behalf in Albanian, interpreted for the tribunal. There was no witness statement for the present appeal, but the file from her dismissed appeal had been linked for reference, as noted above at paragraph 4. Mrs Zeneli said that her husband's health was very bad and one night she had stopped him from jumping to his death from the bedroom window. She could not help him because they did not know about one another's problems, that is, what they had each suffered.
27. Cross-examined, Mrs Zeneli said that there had been no preparations for their wedding, they had no guests, had simply woken up and decided to marry that day by exchanging rings. At the time they had been living at her mother's house. She had not attended the funeral of her late father in law and had not been aware that he had died at the time. The travelling time between her mother's house and the Appellant's house was one hour by bus.
28. In re-examination, Mrs Zeneli said there had been nothing specific about the marriage date, the Appellant had simply

wanted to help her. She was in a difficult situation after her mother's death. She had been hoping to get away from her stepfather. She did not know to where.

29. The Appellant produced a large volume of objective evidence, as partly described in an index which I need not recite here. These included an Amnesty International Report: ***Serbia and Montenegro: A Wasted Year***, various recent UNHCR papers and a copy of a letter dated 24th November 2004 from the UNHCR in London to Sheikh & Co, solicitors, concerning the continuing protection needs of perceived Serbian collaborators associated with Kosovo. There was also a letter addressed "to whom it may concern", dated 20th April 2005, about the Appellant's appeal, from Ms Siân Jones of Amnesty International, London Branch. The Respondent produced the CIPU Assessment for Serbia and Montenegro (including Kosovo) dated 2004.

E. Submissions

30. Ms Pos for the Respondent relied on the reasons for refusal letter, submitting that the Appellant's account of events was not credible. There were a number of significant implausible elements and clashes between the Appellant's testimony and that of Mrs Zeneli. In any event, it now was safe for them to return because the local ethnic tensions in Preshevo had been brought under control. There was nothing to suggest that any of the Appellant's psychological problems could not be treated in Serbia and Montenegro. There was no significant private life in the United Kingdom and family life could be continued in Serbia and Montenegro.
31. Mr Doerfel for the Appellant submitted a skeleton argument, to which I refer, and contended that the objective evidence showed that the Preshevo Valley region was not necessarily safe: there was continuing sporadic ethnic violence. Internal relocation was not possible within Serbia and Montenegro because of the serious discrimination against Roma people, which amounted to persecution. There were possible explanations for the Appellant's evidence which should be regarded as credible and which was supported by the medical evidence. There was a real risk of a breach of Articles 3 and 8.1 ECHR, because the Appellant was a suicide risk and as a Rom would be unable to obtain suitable treatment in Serbia and Montenegro.

inordinately to attempt to set out every part of the Appellant's evidence, so the following analysis is a representative selection.

36. The Appellant claimed that he had been in effect press ganged into working for the Serbian army for a whole year, forced to perform unspeakable atrocities, and yet been well treated, given food for his family and allowed to return home at regular intervals. This episode had commenced with his interrogation about the UCPMB, an odd enquiry if the Appellant were distinctively Rom as he asserted, since he disclaimed any interest in the UCPMB or interest in ethnic Albanian affairs. Indeed, it was probable that such feelings were mutual between ethnic Albanians and Albanian speaking ethnic Roma in the aftermath of allegations of Roma collaboration with the Serbians in Kosovo, which was merely a few miles distant. This is familiar matter: see the UNHCR materials.
37. The Appellant was plainly well aware that stealing from Albanian houses, burning them and knowingly burying wounded soldiers alive, still able to whisper to him for help, were all criminal acts of the most heinous kind, yet he said he made no attempt to escape from his duties imposed by the Serbians. He could surely have crossed the comparatively short distance into Kosovo and reported the matter to the UNMIK police or the KFOR troops and sought their protection, among many other possibilities. He said he returned to the family home bearing Serbian food parcels, knowing (according to him) that merely assisting the Serbians in any way was akin to treachery and that his life was in danger: see, for example, paragraph 28 of his first witness statement. There was no suggestion that his family house was guarded or held under surveillance. The worst that happened during this period was that "most people now wouldn't talk to my family in the village" (paragraph 36 of his first witness statement), which of course implies that some people remained more or less friendly. This is all entirely improbable, not least as the Appellant claims he was later targeted by ethnic Albanians with ease.
38. The Appellant claimed that after the ceasefire and his release from Serbian servitude he took great care to avoid ethnic Albanians, and spent much of his time at his uncle's, yet he was found by the police at his late father's workshop on two occasions, which is an improbably unlucky coincidence to say the least. Throughout this period the Appellant was courting his future wife, who lived near his uncle.
39. An even more improbable part of the Appellant's evidence is that he was subjected to violent homosexual rape and other acts for the personal gratification of a high ranking Serbian police officer, who held the Appellant at a police station under the

pretext of interrogation for almost 2 weeks. The Appellant claimed that the officer was "obviously homosexual". How he knew that was not explained in his evidence, but the inference is that there were outward signs of some sort which would have been visible to anyone.

40. The CIPU Assessment for Serbia and Montenegro dated October 2004, paragraphs S.6.90ff contains limited information about the position of homosexuals in Serbia, but a 1998 survey there cited indicated a high level of homophobia in Serbian society. The police were criticised for their reluctance to intervene in a gay rights march in Belgrade in 2001. There are a number of reported appeals from Kosovo to the now defunct Immigration Appeal Tribunal in which it was held that discrimination against homosexuals existed but did not amount to persecution. Society in that part of the Balkans is not tolerant of homosexuality. Against that objective background, it seems to me unlikely that an "obviously homosexual" police officer would have reached high rank in the Serbian police, and even more unlikely that he or anyone else would have been permitted by his colleagues to have unfettered access to a young man of 18 (as the Appellant was in April 2002) for nearly 2 weeks. This was not a case of torture according to the Appellant but gratification (or perhaps exploitation).
41. Further, I take judicial notice of the very obvious fact that the medical effects of repeated violent rape, especially on an inexperienced, frightened and unwilling young man would be catastrophic. The anal passage is a delicate part of the body, easily damaged (hence a frequent source of HIV infection). Violent rape for 11 days would inevitably lead to tearing of soft tissue, heavy bleeding, not to mention a high risk of faecal incontinence. The extreme pain caused to the Appellant by such an ordeal would surely have caused him to scream uncontrollably, attracting attention. Yet the Appellant claimed that, despite these continuing violent rapes, he was able to perform other sexual acts for the pleasure of the officer which required active physical exertion on the Appellant's behalf (such as fellatio). The officer would have had to cover frequent absences to have engaged in such alleged activity, as well as to run an enormous risk of discovery and exposure himself. There was no suggestion that the Appellant was left without food and water, and so he must have the opportunity to seek help and release from such abominable treatment.
42. Equally improbably, the Appellant sought no medical attention after his release, but was able to return to the family home, not back into hiding as might have been expected. He found his family home destroyed and his father hanged in his blacksmith's shop, and went to his uncle's. Neither he, his uncle, mother nor

future wife sought police help. Mrs Zeneli said that the Appellant did not even tell her that his father was dead at that time. Instead, the Appellant remained sufficiently composed to propose marriage and he and his wife left for the United Kingdom within days.

43. At various points in his evidence the Appellant had claimed that he saw no point in going to the police about the problems he suffered as a Rom, or that he had gone to the police and they had been unable to help. But by April 2002, according to the OSCE news report cited in paragraph S.6.63 of the October 2004 CIPU Assessment for Serbia and Montenegro, the Multi-Ethnic Police Force had been established, trained in modern police tactics. Elsewhere it was stated that 4 officers were Roma. As the Appellant made no suggestion that he had been ill treated by the police when he had complained to them in the past (here I am not referring to his alleged incarceration in April 2002), it is bizarre that neither he nor any of his family sought police help over the death of his father in suspicious circumstances and the destruction of the family home.
44. The Appellant claimed that he had known his wife for several years prior to their marriage and that their relationship had succeeded despite overt disapproval from many quarters. In such a situation, perhaps especially between young people, one would expect to see intimate confidences exchanged. The relationship has continued in a foreign land (the United Kingdom), and has now stood for at least 3 years of marriage. Nevertheless, the Appellant and his wife claimed not to know about their respective horrendous experiences.
45. Mrs Zeneli's account of her experiences is summarised at paragraph 15 of Mr O'Brien's determination, and included rape by her stepfather, prostitution at his behest, an abortion and the murder of her mother by her stepfather on 7th April 2002. After her mother's murder, Mrs Zeneli continued to work as a prostitute. At paragraph 44 of her witness statement as used in her own appeal dated 22nd May 2002, she said "On 25th April 2002, I was informed that Besnik was going to marry me and help me escape. I married Besnik because I needed help and nobody else would have married me."
46. It is notable that both the Appellant's and Mrs Zeneli's witness statements as annexed to their Statement of Evidence Forms were long and detailed documents, certified as read back in Albanian and approved. They show every sign of having been carefully prepared by the solicitors, who took down exactly what their clients said, apparently without reflecting on the probability or plausibility of their clients' respective claims. Although Mrs Zeneli's evidence was accepted by Mr O'Brien, that was in the

context of the concession by Mrs Zeneli's counsel that her asylum claim was withdrawn and she relied on Article 3 ECHR only. As I have already noted at paragraph 4, above, Mr O'Brien dismissed Mrs Zeneli's claim on the basis that a sufficiency of protection was available against all of the fears she identified. That decision, if I may respectfully say so, was undoubtedly right and it is somewhat difficult to see why the Appellant has persisted in his appeal in all the circumstances.

47. The relevant point, however, is that Mrs Zeneli's evidence was put in terms of extreme ill treatment of a predominantly sexual kind, in a manner which might be thought to broadly parallel that of the Appellant, that is, by reference to violent and degrading abuse, with murder for good measure. These are subjects that most people find highly distasteful and difficult to discuss. Such extreme suffering, if true, might be thought to have united them, yet they claim to be largely ignorant of each other's story. That two people should claim to have suffered so badly in broadly similar terms is in my view a remarkable coincidence. It is wholly improbable, in my judgment, that they could each be unaware of the other's story if they genuinely have the longstanding relationship of mutual attraction across a cultural divide which they claim.
48. Mrs Zeneli's evidence before Mr O'Brien was not supported by any medical evidence at all. She told Mr O'Brien that she had not so far even had an AIDS (HIV) test, although by then she had been in the United Kingdom for some 6 months. I find that surprising and to detract seriously from her credibility given her claim that she had been a prostitute.
49. As to the medical evidence relied on by the Appellant, it is notable that Dr Hajioff in his report dated 24th January 2005 makes no reference to the much earlier report of Dr Aldouri, and there is no suggestion that he was shown it. Nor does Dr Hajioff indicate that he was shown the Appellant's United Kingdom medical records. There must be such records, as the Appellant was receiving prescription drugs. Dr Hajioff cannot be blamed for those deficiencies, but it meant he had nothing to assess the Appellant against save for the Appellant's self reported symptoms.
50. Dr Aldouri was also working from the Appellant's self reported symptoms, but it is noteworthy that he expressed no view suggesting that the Appellant's case was of any special severity. Indeed, Dr Aldouri's view was that the Appellant would recover within months rather than years, which suggests very moderate symptoms.

51. Both doctors, both qualified and experienced consultant psychiatrists, were agreed in a diagnosis of Post Traumatic Stress Disorder, and it may well be that the Appellant has suffered some traumatic experience which would support such a diagnosis. There may possibly be some elements of truth buried within his evidence, which he has then built on and embellished. Because of the large number of serious deficiencies in the Appellant's evidence, however, I cannot be satisfied to the required standard of reasonable likelihood that any such traumatic experience or experiences was or were suffered by him in the manner he claimed, that is, were the result of persecutory treatment which engages the United Kingdom's obligations under the Refugee Convention.
52. Taking into account the Appellant's evidence as a whole, including the evidence given by Mrs Zeneli, I find that he cannot be treated as a reliable witness. I prefer the objective evidence to which I have referred above where it conflicts with his or Mrs Zeneli's version of events.
53. I find that the Appellant has failed to prove that he is readily identifiable as a Rom, even in the Preshevo Valley area where he spent his whole life prior to coming to the United Kingdom, after the Covic peace plan agreed in 2001 had been successfully implemented. I reject the Appellant's claims that he and his family were persecuted because of their Roma ethnicity. I reject the Appellant's evidence so far as it was challenged by the Respondent. I find that the Appellant's claim is a brazen fabrication and that any traumatic experience he suffered in Serbia and Montenegro was not truthfully identified or described by him.
54. In my judgment, while longstanding inter ethnic tensions have been the source of dangerous instability of the Balkans region for centuries, the Appellant's fears of ethnic Albanian or Serbian violence in the future in the Preshevo Valley region are not objectively well founded. In the simplest terms, Serbia and Montenegro cannot afford to revert to its past approach towards its component minority ethnic populations, whether Albanian or Albanian speaking Roma: see the CIPIJ Assessment for Serbia and Montenegro, October 2004, paragraphs S.6.57 ff and S.6.76ff, especially paragraph 6.70. Serbia and Montenegro have responded to international pressure for reform, although the process is a continuing one and will take years to achieve fully.
55. It is clear, of course, that discrimination against both ethnic Albanians and Roma remains a serious problem in Serbia and Montenegro, as the CIPU Assessment makes no attempt to disguise, and as is referred to in campaigning detail by Ms Siân

Jones of Amnesty International in her "to whom it may concern" letter. There Ms Jones recalled Amnesty International's recommendation to all Council of Europe member states "to only promote voluntary returns of Roma to SCG [Serbia and Montenegro] in situations where these can take place in conditions of safety and dignity".

56. It was, however, not disputed by the Respondent that the Appellant has an uncle in Muhovc with whom he is on good terms. It is in Muhovc that the Appellant and his wife first became acquainted. Even on the Appellant's own case, he came to no harm there. Hence, there is no reason for the Appellant to become one of the large number of Roma IDPs in Serbia and Montenegro, because he has a close relative. I consider that, even if I were mistaken to find that the Appellant failed to prove that he is identifiably Roma, any discrimination he would face in the Preshevo Valley area of Serbia and Montenegro would not amount to persecution. Mrs Zeneli, as I have already noted, did not pursue her asylum appeal and Mr O'Brien dismissed her human rights appeal. My decision is similar to his, made on current objective evidence.
57. The Appellant's Article 3 ECHR claim so far as it was based on fear of Serbian or Albanian violence ran parallel with his asylum appeal and adds nothing to it. Thus I must dismiss the asylum appeal and the related Article 3 ECHR claim.
58. As to the Appellant's Article 3 and 8.1 ECHR claim, his personal and moral integrity claim, that may be said to lie within the **Bensaid -v- United Kingdom** 33 EHRR 10 line of cases. Assuming for these purposes only that the PTSD diagnosis for the Appellant was correct although not based on a persecutory event in Serbia and Montenegro, but some other traumatic event which the Appellant has chosen not to identify, there was no suggestion that the Appellant has an established productive therapeutic relationship in the United Kingdom on which his personal and moral integrity and future progress depends, but which removal would destroy. There are poor but adequate facilities in Serbia and Montenegro for the Appellant's psychiatric treatment, according to paragraph S.5.51 of the CIPU Assessment. Obviously the Appellant is not entitled to insist on the same standard of healthcare as is available in the United Kingdom: see **K v SSHD** [2001] Imm AR 11 for a discussion of the relevant principles.
59. Indeed, the Appellant produced no proof that he had attended counselling in the United Kingdom in the past or was on a waiting list for more counselling. Now even if his claims about such counselling were true, he had English language difficulties, which suggests that counselling in the United Kingdom would

not be of much use to him. There was no suggestion that any of the medication the Appellant uses was not available in Serbia and Montenegro.

60. I reject the Appellant's claims that he is in effect a suicide risk, because of the wholly unreliable nature of his evidence, but if I were wrong about that, I accept that he and Mrs Zeneli have a close and continuing relationship and find that she is able to keep reasonable watch over him. No recent attempts at suicide were claimed. Dr Hajioff said that the Appellant was trying to be strong for the sake of his wife.
61. Taking all relevant matters into account, I find that there are no substantial grounds for believing that the consequences of the Respondent's decision to remove the Appellant would lead to a real risk of the breach of the Appellant's rights under Articles 3 and 8.1 ECHR. I find that the United Kingdom's obligations to the Appellant have been met and the return of the Appellant to the Preshevo Valley under the conditions which now exist there would not cause him any serious or disproportionate harm. The right to maintain immigration control in the national interest as is permitted under Article 8.2 ECHR must prevail on the facts as I have found them. I therefore dismiss the human rights appeal.

DECISION

I dismiss the asylum appeal

I dismiss the human rights appeal

Signed

R J Marshall

Dated

28 iv 05

Immigration Judge

7-037
IN THE ASYLUM AND IMMIGRATION TRIBUNAL
HX/00101/2005

CASE REF:

BETWEEN:

BESNIK ZENELI

Appellant

- v -

**THE SECRETARY OF STATE
FOR THE HOME DEPARTMENT**

Respondent

**APPEAL STATEMENT OF
BESNIK ZENELI**

I, BESNIK ZENELI of 79 Fallow Court Avenue, London N12 0BE make this statement in respect of my asylum appeal and will say as follows: -

1. I wish to adopt the contents of my previous statements which are attached to this statement and set out the details of my case.
2. I would like to start by stating that I do not want my case joined to that of my wife as my case contains separate issues that I do not want my wife to be aware of at this stage as I am still trying to get over the traumatic experiences I have faced in the past.
3. I am still suffering from depression and obtain medication from my GP. I take anti depressants and I take one tablet per day. When I take this medication I still feel depressed but sometimes feel a little bit better. If I did not take the tablet I would feel extremely depressed and whilst I cannot say that I am not depressed I am but not as much as if I were not receiving treatment.
4. I have taken anti depressants since I have arrived in the UK.

5. I also have difficulties in sleeping at night and generally only sleep for two hours per night and when I do sleep I have very bad dream such as things that have happened in the past to me and I relive the nightmares in my dreams. I take sleeping tablets every night but even with the tablets I am unable to sleep. As a result I feel tired physically and mentally. When I have the nightmares when I wake up this causes me to think constantly about what I have dreamt about and what has happened to me in the past and I wonder all the time if the pain will ever end.
6. I underwent counselling in the past and attended 13 sessions over a year and a half ago but I cannot remember the exact date. I had to stop as it was very difficult to express myself due to the language barrier. The counselling I attended previously was a charity organisation that does not require referrals from GP's. I am considering approaching them again or further sessions now that my English has improved.
7. I found that despite the language problems the counselling was useful and made me feel better at the time as I talked a lot, as much as I could and cried which felt like a relief to let the pain out. It was frustrating that I was unable to fully express myself with the language and this is why I stopped attending.
8. I am currently attending at college and started to learn English last year in January 2005 and continue this for as long as I require. As part of college each Saturday I do a placement for carpentry which I am really enjoying. This helps me with my English and when I am occupied and busy then for a short time I can forget my problems. If I did not have something to do I would be endlessly tormented by my problems.
9. I have recently met a man who has come from Presheve who told me that there were still conflicts and violence ongoing in the area. This made me worried and afraid as people may be suffering in the same way that I did I do not wish that on anyone. I was reluctant to talk about the situation and so was he so we only discussed this briefly.

10. I am generally unaware of the situation in Presheve and this is because I do not want to know anything about the country that has caused me so much pain and trauma. I just hope that nobody suffers as I have but I do not want to see stories of death and peoples suffering on the television or in newspapers.
11. I have had no contact with anyone from Presheve. My father was killed and I have had no contact with my mother since I left in 2002.
12. If I am returned to Serbia I know that my life is in danger and I will be killed. I fear from the Albanian Extremists who will kill me as I was forced to help the Serbs. I will not receive any protection from the authorities who will not help me as a person who will be hated by the general population due to what the Serbs made me do in the past. Many of the people will recognise me.
13. I will face further problems as I am a Roma. Due to this I will not be able to live safely in another part of the country as the country is very traditional and any strangers to the area are questioned as to where they are from and why they are there. Also due to my appearance I will not be accepted as they will know that my ethnic origin is Roma gypsy and as such I will be discriminated as I was in the past.
14. I would not be able to return to Serbia with my wife as she is Albanian and I am not. Mixed marriages do not exist in my country and we will not be accepted by society and would be ostracised and persecuted due to this. We would be forced to live our lives in hiding and would be in danger.
15. I ask that the court accept all these factors. I truly fear for my life if I am returned. I am a Roma gypsy, I was forced to work for the Serbs during the war and I am married to an Albanian woman. For all these reasons I cannot return to Serbia.

Signed: _____

Besnik Zeneli

WITNESS STATEMENT OF MR BESNIK ZENELI

Home Office Reference No: Z1030866

Tuckers Solicitors Reference No: RH/ZEN/00004

I, Mr Besnik Zeneli, of 78c Bounds Green Road, Southgate, London N11 2EU, WILL SAY AS FOLLOWS:

1. I was born on 8th May 1983, in Rahovice, Presheve in the Federal Republic of Yugoslavia (Serbia).
2. I am a Roma Gypsy from Serbia.
3. My father Faik Zeneli was a blacksmith. He owned his own workshop. He is now deceased. My mother, Mrs Sulltane Zeneli, was a housewife. I have no brothers or sisters.
4. I grew up in the village of Rahovice.
5. On 1st September 1990, I attended the primary school of Rahovice. I stopped school on 15th June 1992. The reasons I had to stop my schooling was that I was ill treated. I was a Roma Gypsy. The majority of students in our school were ethnic Albanians. Even the teachers were ethnic Albanians. The heads of the education departments were Serbians. The two years of schooling that I completed was very difficult. I was beaten by pupils. I was sworn at. I wasn't liked as I was Roma Gypsy. People would steal money from me because of my ethnicity. I

was spat at. I had my lunch stolen from me and no one would be friends with me.

6. In my entire school of 120 pupils, roughly 10 were Roma Gypsy and 40 were Serbians. The rest were ethnic Albanians.
7. I reported my ill treatments to the teachers but nobody could help me. Teachers turned a deaf ear to my complaints. They were just like the pupils. I informed my parents about it and I was forced to leave school as nothing could be done for me. My parents decided it was best for me to leave for my own safety. Even out of school I was abused by the Albanian pupils. On the way home I would be called all sorts of names. I was called a "dirty race" and "maxhup" [meaning Gypsy]. Many times I would have stones thrown at me. I couldn't fight back because of the quantity of Albanians doing this to me. I just had to run. I even have a small scar on my head where a stone had hit me on one occasion.
8. I couldn't report this to the police because I was just a child. They wouldn't pay any attention to me they would think I was just a child playing games. My mother and father would go the family houses of the Albanians that were causing trouble. Those families would not do anything either. They would just tell my father to go away and abuse him. My parents couldn't go to the Police as Roma Gypsies had no faith in the Police force as they did not like to help our kind.
9. When I stopped my schooling, I helped my father at his workshop assisting him in metal repairs. Occasionally I played drums in a band that

I was a member of. We would play for various occasions such as marriages or ceremonies.

10. During the year of 1992 to 2000 we experienced many problems with Albanians and Serbs. We were hated in the village. We were looked down upon as an ugly race. No one wanted Roma Gypsies in their village.
11. On some occasions when I was playing in a band we would not get paid. The people that we were playing for, found out we were Gypsies and would not pay us. We couldn't fight them. We just had to leave it. We could not go to the Police as they were not interested in what happens to Roma Gypsies in our personal lives.
12. It was during my time working as a drummer that I met Anila. Anila was an ethnic Albanian. She was a friend of my cousin, Zahide. They were good friends. When I travelled to Muhovc to see my aunty and uncle, I would see Anila. Our meetings were done in hiding. They were not done in public as this would outrage our village and get both of us into trouble.
13. I made my feelings known to her and time and time and again I asked to go out with her. She refused as I was a Gypsy. It was because of the colour of my skin that I was not accepted by Albanians or Serbians. Our mixed relationship would cause a lot of problems. Anila would also have shame placed on her family if she went out with me. I also knew that her stepfather would not accept such a relationship. We carried on with our friendship although she refused at this stage to go out with me. It wasn't

until later on that we began comforting each other in our problems. We had a lot of problems and we felt solitude in being with each other.

14. Around June 2000, the conflict started between ethnic Albanians and Serbian Authorities. Albanians were asking for rights. They wanted to join the rest of the Albanians and fight for freedoms of education and Albanian representation in the police force and the Government. This is how the conflict started. War was evident and in no time we saw tanks and soldiers as a daily occurrence.
15. They were passing through our village dispersing people. Albanians created military organisations [like the UCPMB] to combat the Serbs. The UCPMB was the army for liberation of Presheve, Metvegje and Bujanovc. This organisation stood for the rights of Albanians in these towns.
16. I was not interested in this organisation as I was a Roma Gypsy. I stopped school because of the Albanians so I was not interested at all.
17. On 30th July 2000, Serbian soldiers entered my house by force. I was getting ready to go to the workshop in order to help my father. They smashed down my door. My father was at the workshop at the time and my mother was outside. 15 soldiers came to our house. I was informed that I would have to go with them. They started interrogating me about the UCPMB. They wanted to know locations and who were members of the UCPMB. They also wanted to know where they were and how they got their food supplies.

18. I told the soldiers that I did not know anything. I knew nothing of these things. They stated to me that I had to go with them. I refused but they began kicking me and hitting me with their fists. They said to me that they had a job for me to do it. The soldiers then ransacked my house. My mother entered the house. Immediately she saw what was going on and she began crying, begging for me not to be taken. One Serbian soldier pushed her to the ground and told her to shut up. I went to assist her but I was taken away and forced into their truck.
19. I was the only one in their truck and the rest were soldiers. All other Albanian men in the village had left or were hiding in the mountains, some had even gone to fight the UCPMB.
20. Other houses only women and children lived. We were one of three complete families in the village. These three complete families were Roma Gypsies.
21. The Serbian army took me to the military barracks in Rahovice. I was placed in a room with a bed and a window but with iron bars in front of the window. There was door that could be locked but I was free to walk around. I couldn't escape as it was the military barracks and there were guards everywhere. Even around the perimeter of the barracks.
22. The Serbian soldiers did not explain to me what would happen or how long they needed me. I felt like a slave. I asked questions like why they had taken me and why I can't go home and I was instructed that I was there to help them.

23. I was soon put to work. During the war I travelled with the Serb soldiers by truck. Our job was to check houses. They would force me to go in first as they were scared that the empty houses were booby-trapped or there was a bomb waiting in the house. My life was expendable and the soldiers knew that.
24. Most of the houses were empty apart from the houses with women and children in them. Most of the people had fled. It was our job to collect valuable items from the houses and hand them to the soldiers. In some instances I was instructed to burn the houses after we had finished searching the house. The roofs were wooden so I would just throw the petrol on the houses and light them simply with matches.
25. When we came across houses with women and children [many of whom knew me] I was often made to search them. I could see that they had a look in the eyes that they wanted to kill me. I knew it was wrong but I was forced to do this job. They would often say to me not to take their valuable items. They also threatened me saying that they would tell their husbands what I was doing. This was even done in front of the soldiers. The soldiers just laughed. They were happy to see the houses go up in flames so they didn't care.
26. On many occasions when the women and children were involved soldiers would go up to them take their jewellery off them and rip their clothes off them. This was done in order to humiliate them. I have taken rings necklaces and earrings off people but I was not involved in ripping their clothes off them.

27. Sometimes everyone was made to line up. Women and children on one side and other older males or people that had not fled the village on the other side. It was my job to take all valuables off them. I would see the look on people's faces as they saw me doing this. I knew that the day would come when everything would turn on me as the war would finish.
28. I knew that my life would be in danger when this happens but I was forced to do this job so I had no other option.
29. Sometimes the Serbian army committed atrocities that I could not bear to repeat. Sometimes when the older women would complain about their valuables being taken away from them, the army would just walk up to them and shoot them at point blank range. I felt sorry for these people. I was young and I had never ever seen anyone be killed before. On many occasions I was also taken near the front line of fighting. I was not armed but I was made to do horrendous jobs for the soldiers. I saw many dead UCPMB soldiers.
30. My duty was to take their dead bodies from the mountain and bury them. I had to drag these men and dig holes for them and bury them. The Serbian soldiers who were killed were taken away to hospitals for preparation for burial.
31. I would sometimes come across wounded UCPMB Soldiers. They were still living. They were whispering to me to help them. They were heavily wounded and could not move. I was forced to bury these people alive. I was constantly being guarded by a Serbian soldier so I had to follow the Serbs instructions and bury them. I feel like crying when I recall what I

had done. I was crying when I was burying these people. I will always remember this. It will always stick in my mind. I feel bad and I am horrified for what I have done. I feel so ashamed.

32. Other jobs that the Authorities made me do would be general cleaning duties at the barracks. I was not badly treated. I was fed and I was allowed to see my family every 10 days. I was given food to give to my family. Other ethnic Albanians of the village did not associate with me now. In the past they wouldn't associate with me now they wouldn't dare talk to me as they were scared.

33. They knew that I was working for the Serbian army.

34. When I was completing my job for the army I confronted some of the bullies that attacked me in the past especially at school. I didn't feel sorry for them but I felt a twisted type of happiness that I was getting retribution from them. They now saw me with a complete hatred.

35. My family was OK whenever I saw them. At the beginning they thought that I had been killed but they were happy to see me. I would only stay for one night and then I would return the next day. I knew that if I didn't return the following day then the Authorities would come looking for me and kill me. They knew where I had lived so if I did escape then my family would be in danger.

36. Most people now wouldn't talk to my family in the village. I would often tell my family what I was doing and they were trying to convince me to leave but it was not as easy as that. They were scared about my future and

scared about what I was getting myself into. I told them that I had no choice.

37. In May 2001 an agreement was reached between the Serbian army and the Albanians. A sort of cease-fire happened. I do not know the conditions but I was happy that I was allowed to go home. I had just spent one horrific year that is an experience that will haunt me forever, so now I was glad that it was all finished. I went home. I noted that all the Serbian army would start leaving their village. The role of the army now would be taken over by the Police to keep public order. I was glad that the policeman did not know me for who I was.
38. I tried to get back into normal life as good as I could. My life felt like it was in danger now. I had been discriminated against before but now it was on a much more serious scale. People were returning back to the village that they once fled.
39. In the streets I would soon start to be victimised again. They would throw things at me or run after me. I had to hide at home. My mailbox was full of ultimatums such as I was a Serb, or I will be killed we will burn you alive. I started moving around as I couldn't stay in one place. I rarely went to my father's workshop to help him. I spent the majority of my time now at my uncle's place in Muhovc. His name was Rifat Tusha.
40. I used to visit my family's house occasionally and I rarely visited the workshop. I was always being careful about my movements in case I was caught by Albanians that sought revenge. I wouldn't go to the police because of my troubles as no one would deal with Gypsies. They would

ignore me as they had their own troubles to sort out. They needed to sort out law and order in the area. I did in fact report my troubles to the police but to no avail. They did not want to help me out. I was told that I was being the victim by many people in the village and that there was nothing that they could do for me.

41. On 10th November 2001, the Serbian Police came to my father's workshop. I was there at the time. I was taken away with them as some policemen had been killed and they wanted me to help them detain the perpetrators. I was detained for six hours against my will. The Serbian Police had thought that I might have heard something from the Albanians. During the six hours I was beaten kicked I was interrogated to give information. After six hours through I was released after constantly stating to them that I did not know anything about the killings. I knew nothing. I had no connections.
42. They advised that they would keep in contact with me. They said that they would visit me to gain more information. I went home scared. I did not know what to do.
43. I continued hiding and continued moving around. I couldn't stay in one place because people would identify me. Anlla had problems as well. She had problems with the Serbs and paramilitaries. Her father-in-law got her involved in some atrocities. I am not too sure what they are as I have not been told. He was strong nationalist and commanded a paramilitary force. Anila has not told me all the details about what had happened but I know that she had been tortured, ill treated and threatened. She does not tell me the rest. She gets very upset.

44. On 9th April 2002, the Serbian Police came and took me away from my father's workshop again. They must have seen me go into the workshop. They told me that I had to go with them to Presheve. They detained me for two weeks. I was placed in a cell, different from the rest. It was a special room. I was interrogated about any organisations in the village that were against the state. The man that was interrogating me was a high ranking officer. He would tell his colleagues that he was interrogating me but he was doing something much worse. I was sexually assaulted.
45. In the room where I was interrogated there were different tools hanging on the walls. There was different scythes, axes, swords, mullets and rifles. It was a room like a torture room. Then the most horrific experience of my life occurred. The Serbian Police Officer then wanted to kiss me. He was obviously a homosexual and that his position enabled him to do whatever he wanted. I was forced to do what he wanted. I was scared for my life. He was a high ranking Policeman. No one would check on him. This man then raped me.
46. I was detained for 13 days and 11 of these days this man violently raped me. I did not want to live and I had lost control. I decided that if I got out of there alive then I would flee the country.
47. He made me complete oral sex and other things, anything that pleased him. I cannot say what all the atrocities were that he did to me. I have never told anyone else about this before and I find it very difficult to tell my ordeal. I wish to seek medical assistance in the United Kingdom to help me deal with my incident.

48. I soon began to realise that I was not kept in detention for my information but I was solely being kept for their sexual gratification. On 21st April 2002 I was shown the front door. I was being released. I did not want to live as I had changed now as a person. I was scared of losing it.
49. I can physically feel that I am holding on to my sanity by a thread. I do not have any strength anymore.
50. I went home but found my house had been burnt down. It was completely in ashes. The Albanians must have burnt it down. I had done things wrong, I betrayed them when I worked with the Serbian Army. I was very scared now and I did not know what to do. I thought of my Mum and my Dad. I then decided to go to my Dad's workshop. I found my Dad inside.
51. He had been hanged.
52. He was dark and smelly. It looked like he had been there for many days. I was horrified. I did not know where my mother was at this stage. I released my father and let him fall to the ground gently. I left my father there and went to my uncle's place. I was scared. I did not know what to do.
53. When I got to my uncle's place I was reunited with my mother. She were happy to see me and I was happy to see her. I thought that she was dead and they had the same thoughts with me. I contacted Anila. I had already decided to leave and I knew that Anila wanted my help to leave the country as well. I informed her of what had happened. I went back

and buried my father outside his workshop and returned back to my uncle's place.

54. An old Gypsy man helped me find an agent. He was a distant relative of my uncle. I had to pay €1,500 and my uncle paid the remaining €4,000 in order to get myself and Anila to safety.
55. I decided to get married to Anila and on 26th April 2002 we exchanged vows and rings in a simple ceremony. On 1st May 2002 we left Rahovice with my wife and an agent in a car to Montenegro. I had never been out of Presheve before so that's what he told me and that's what I assumed. We were there for several hours before entering a lorry and entering the United Kingdom.
56. I sought representation to help me with my asylum claim as I did not know how to claim asylum. I then claimed asylum at the Home Office.
57. I request the Secretary of State for the Home Department to consider my application for asylum as I have a well founded fear for persecution. If I were to return I would be killed. I fear danger if I were to return.
58. I am a Roma Gypsy and as such I am no longer trusted by the Albanians in Serbia. I have married an ethnic Albanian and mixed marriages are no longer accepted by anyone in the Former Republic of Yugoslavia.
59. I have been traumatised mentally physically and sexually by the State. I have no faith or trust in the State. If I were to return then I would be attacked on revenge of the citizens that I had worked against during the

conflict. People know that I was working for the Authorities although it was against my will they will attack and kill me on sight. I cannot seek protection from the State as I fear the Authorities now because they raped me. I cannot return. I require international protection for myself and now my wife.

The entire contents of this statement have been read back to me in my own language and I confirm that the contents of this statement are true and correct.

Signed:.....

Name:..... Dated.....

I confirm that I have translated the entire contents of this statement to Besnik Gashi, from the English language to Albanian, and Besnik Gashi has confirmed the contents of the statement as the truth.

Signed:.....

Name:..... Dated.....

AIT-PE-EF.V1

Asylum and Immigration Tribunal

Appeal Number: HX/00101/2005

THE IMMIGRATION ACTS

Heard at Hatton Cross
On 9th November 2006
Prepared 10th November 2006

~~Determination Promulgated~~

..... 18 DEC 2006

Before

DESIGNATED IMMIGRATION JUDGE WOODCRAFT

IMMIGRATION JUDGE N M K LAWRENCE

Between

MR BESNIK ZENELI

Appellant

and

THE SECRETARY OF STATE FOR THE HOME DEPARTMENT

Respondent**Representation:**

For the Appellant: Mr J. Doerfel of Counsel
For the Respondent: Mr M. Vale, Home Office Presenting Officer

DETERMINATION AND REASONS**The Appellant**

1. The Appellant claims to be a national of Serbia the former Federal Republic of Yugoslavia from the region known as the Presevo Valley. He was born on 8th May 1983. He appeals against the decision dated 5th July 2002 to refuse asylum under paragraph 336 of the Immigration Rules HC 395 and to give directions for the removal from the United Kingdom pursuant to Section 16(1) of the Immigration Act 1971.
2. The Appellant further claims to have arrived in the United Kingdom clandestinely on 7th May 2002 accompanied by his wife. He claimed asylum on 8th May 2002 as did she. Her application for asylum was refused by a letter dated 4th July 2002. The

Appellant's wife appealed that decision but her appeal was dismissed following a hearing at Taylor House on 14th November 2002, the Appellant's wife having withdrawn her claim for asylum under the Refugee Convention at that hearing.

The Appellant's Claim under the Refugee Convention

3. The Appellant claims under Section 82(1) of the Nationality, Immigration and Asylum Act 2002 that a return to home territory would be a breach of the United Kingdom's obligations under the 1951 United Nations' Convention relating to the Status of Refugees and the later Protocol ("the Refugee Convention"). In determining this appeal we have paid due attention to section 85 of the 2002 Act and in so doing have taken into account all avenues of appeal open to the Appellant.
4. It is for an Appellant to show that he or she is a refugee. By Article 1A(2) of the Refugee Convention, a refugee is a person who is out of the country of his or her nationality and who, owing to a well-founded fear of persecution for reasons of race, religion, nationality or membership of a particular social group or political opinion, is unable or unwilling to avail him or herself of the protection of the country of origin.
5. The degree of likelihood of persecution needed to establish an entitlement to asylum is decided on a basis lower than the civil standard of the balance of probabilities. This was expressed as a "reasonable chance", "a serious possibility" or "substantial grounds for thinking" in the various authorities. That basis of probability not only applies to the history of the matter and to the situation at the date of decision, but also to the question of persecution in the future if the Appellant were to be returned.
6. On the 9th October 2006 The Refugee or Person in Need of International Protection (Qualification) Regulations 2006 ("the Qualifying Regulations") came into force and some consequential changes in the Immigration Rules were inserted after paragraph 339 of the existing Rules. Under the Qualifying Regulations a person is to be regarded as a refugee if they fall within the definition set out in Article 1A of the Refugee Convention (see above) and are not excluded by Articles 1 D, 1E or 1F of the Refugee Convention (Regulation 7 of the Qualifying Regulations). Although the Respondent's decision in this case was made before the coming into force of the Regulations, the law which governs this appeal is now set out in the Qualifying Regulations. However this makes no substantive difference to the position in this case as the test of entitlement to asylum remains the same now as when the Respondent made his decision.

The Appellant's Claim for Humanitarian Protection

The Statement of Changes in Immigration Rules provide for a grant of humanitarian protection in circumstances where a person does not qualify as a refugee but can show substantial grounds for believing that they would, if returned to their country of return, face a real risk of suffering serious harm. The applicant must be unable or owing to such risk unwilling to avail himself of the protection of that country.

Appeal under the Human Rights Convention

This appeal is also brought under the 2002 Act because the Appellant alleges that the Respondent has in making his decision acted in breach of the Appellant's human

rights. The Appellant has in particular relied upon Articles 2 (Right to Life), 3 (Prohibition of Torture) and 8 (Right to respect for private and family life) of the Human Rights Convention. The standard of proof for Article 3 and by extension to the other Articles is that there should be substantial grounds for believing that there is a real risk of treatment contrary to Article 3 which creates a burden of proof on the Appellant which can be equated with the burden of proof in asylum cases. It also equates with the burden and standard of proof in claims for humanitarian protection.

Documentation Considered

9. On the file was the original Home Office bundle. This documentation comprises the decision of the Secretary of State in the reasons for refusal letter dated 4th July 2002 and all matters before the Secretary of State upon which that decision was made. These are a matter of record on the file and I will not set them out further here.
10. For the hearing, the Appellant submitted a bundle which comprised a witness statement of the Appellant dated 25th October 2006, statement from the Appellant's wife of the same date and a report prepared by Mr James Korovilas dated 2nd November 2006. Mr Korovilas' report was written without him apparently having met the Appellant and on the basis that he accepted what he had been told as to the Appellant's claimed Roma ethnicity.
11. There was also a bundle of objective material in the form of the decision of **KX [2006] UKAIT 00072**, reports from Freedom House, United States Department of State, Helsinki Committee for Human Rights, Forum 18, Balkans Investigative Reporting Network, Interpress Service News Agency and European Roma Rights Centre.
12. The third part of the Appellant's main bundle contained:
 - Further objective material in the form of the 2004 United States Department of State Report, Human Rights Watch Report 2005, extract from the Helsinki Committee for Human Rights, report about Serbian police abuse of Roma, report concerning legal action in Roma cases in Serbia and Montenegro, news reports, United Nations Committee Against Torture Report.
 - A first statement of the Appellant which also appears in the Respondent's bundle. The copy in the Appellant's own bundle was unsigned and undated but the Respondent's bundle shows that it was signed and dated on 22nd May 2002.
 - an additional statement of the Appellant dated 8th February 2005,
 - a report from Dr E Aldouri dated 17th September 2002 Dr Aldouri purports to diagnose post traumatic stress disorder and describes how the Appellant would wake in the middle of the night and go for a walk in the local park "to calm himself down".
 - A report from Dr J Hajloff who saw the Appellant on 18th January 2005. He was never shown the earlier report of Dr Aldouri. Counsel who appeared before us was unable to explain why that was so. He too diagnoses post traumatic stress disorder and refers to "some support from the female cousin who is here with her family". No such person has ever given evidence in these proceedings. We deal with this matter in more detail below. He also describes the Appellant sleeping badly but like Dr Aldouri, at no point does Dr Hajloff discuss with the Appellant what if anything the Appellant has discussed with his wife about matters or what her reaction to those symptoms is and how she could assist him;

- there were documents common to the Respondent's bundle such as the reasons for refusal letter, .
13. At the hearing we were handed certain further documents including: a further skeleton argument which was additional the original skeleton argument dated 19th May 2005; chronology; a very large number of documents of objective evidence including some which were in the previous bundle but whose relevance to the issues we had to decide was an inverse proportion to their voluminous size.
 14. For the hearing the Respondent also filed the Country Information and Policy Unit's country report for Serbia and Montenegro dated April 2005 and we were also handed the operational guidance note for the Republic of Serbia including Kosovo dated 30th June 2006 by Counsel for the Appellant.

History of the Proceedings

15. When the Appellant and his wife made their separate claims for asylum and lodged their appeals they were both represented by the same firm of solicitors Messrs Tuckers. However at some date prior to January 2005 the Appellant and his wife changed solicitors to another firm called Punatar and Co in London N19.
16. The Appellant's wife's case had come on for hearing at Taylor House on 14th November 2002 very quickly after she had lodged a notice of appeal. Similar speed was not shown in processing the husband's case. Although the Appellant's wife was found to be credible her claim was dismissed on the basis there was no risk on return.
17. There was then a delay before the Appellant's appeal was sent by the Respondent to the Immigration Appellate Authority who fixed a first hearing for Friday 28th January 2005 with a full hearing to take place on Thursday 3rd March 2005. Due to an administrative error an appeal in the name of the Appellant's wife's was listed for hearing on Thursday 6th January 2005 with a full hearing to take place on Wednesday 2nd February 2005. In December 2004 the Appellant's solicitors Punatar and Co wrote to the court to say that had to be an error because she "does not currently have an appeal outstanding and has not had since we took conduct of her Immigration matters in October 2003."
18. The mistake having been corrected the Appellant's case came up for hearing on 3rd March 2005 when the Appellant was represented by Counsel Mr Doerfel who later appeared before us. Due to late service by the Respondent of documents the hearing on 3rd March 2005 could not go ahead and instead was adjourned until 28th April 2005 when the matter came on before Designated Immigration Judge Manuell. In a determination promulgated on 28th April 2005 he dismissed the Appellant's claim under the Refugee Convention and under the Human Rights Convention.
19. The Appellant appealed that decision. The Appellant had submitted a letter dated 20th April 2005 from Amnesty International, the day before the hearing before Mr Manuell. The letter stated that Amnesty International were "not able to corroborate [the Appellant's] account" however the letter went on to suggest that the Appellant "has a Roma as a partner in an ethnically mixed marriage and as an individual perceived to have been associated with Serbian forces in the period of conflict of

Southern Serbian may also have a well-founded fear of persecution". The letter concluded that in March 2005 Amnesty International had recommended to all Council of Europe Member States to only promote voluntary returns of Roma to Serbia and Montenegro.

20. The appeal against Designated Immigration Judge Manuell's decision came on the papers before a Senior Immigration Judge who ordered reconsideration on 3rd June 2005 stating:-

"The proposed grounds for review are at 15½ pages slightly longer than the Designated Immigration Judge's decision; this is a serious abuse of the procedure which casts a poor light either on Counsel's good faith or, as I should prefer to think, his judgment. There is however one arguable point buried in the mass of verbiage, which relates to the use made by the Designated Immigration Judge of the apparently undisclosed material from the Appellant's wife's case – so he must surely be right to say that the Home Office ought to have arranged for both to be heard together. On this point only, reconsideration is granted."

21. The grounds of appeal had alleged that in deciding the Appellant's case the Designated Immigration Judge had taken into account an immaterial decision namely the finding in the Appellant's wife's case. Although it was contended in the grounds of appeal that the Designated Immigration Judge had erred in holding that the Appellant and his wife's appeals were related and should have been plainly heard together, this ground of appeal was clearly not upheld by the Senior Immigration Judge in granting permission for reconsideration. It was also argued in the Grounds of Appeal that the Appellant's wife's file had not been made available to the Tribunal for reference "and the Appellant had not been aware of this fact". Given that both the Appellant and his wife were represented by the same firm of solicitors this is a very curious remark in the grounds of appeal as the Appellant's representatives could hardly claim to be unaware of what was being said in both the Appellant and his wife's case and could have lodged such papers themselves.
22. The stage 1 hearing took place on 21st August 2006 before Senior Immigration Judge Latter. Attached to this determination is a copy of his determination. At paragraph 9 of the determination Senior Immigration Judge Latter dealt with the taking into account of evidence from the wife's separate hearing. The judge pointed out that there was no reason in principle why the determination in the wife's appeal should not have formed part of the evidence in the Appellant's appeal. However Senior Immigration Judge Latter said in relation to the wife's statement which he had made for her previous appeal her appeal "as far as I can see that material was not made available to either the Appellant or the Respondent in this appeal". There is an argument as to whether the Appellant has seen his wife's statement but there is certainly no doubt that the Appellant's solicitors had seen the wife's statement since they acted for her. It struck us as a very curious ground of appeal that solicitors who had acted for both the Appellant and his wife should have argued through Counsel who was the same Counsel who represented the Appellant throughout, that material from the wife's case had not been made available to the Appellant. Even if the Appellant himself was not going to read it, the Appellant's lawyers were clearly aware of the issues arising from the documentation.

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23. The Senior Immigration Judge held that the statement in the wife's case should not have been taken into account in the Designated Immigration Judge's determination without the parties having a proper opportunity of commenting on it. The other material error of law was found to be the fact that the judge had placed little reliance on a report from Amnesty International dated 20th April 2005 which we have summarised above because the account given by the Appellant was "entirely consistent with the practise well documented in nearby Kosovo." The Appellant has never said that he has been to Kosovo nor has he ever said that he committed any atrocities in Kosovo. The Appellant's account of travelling to Albanian villages with Serb soldiers by truck was said to be a practice confirmed by other evidence. Senior Immigration Judge Latter held that the report was capable of providing corroboration of the Appellant's account and that aspect had not been taken into account by the judge. Of course to say that a document is a capable of providing corroboration is not the same as saying that it does provide corroboration and in sending the case on for a stage two reconsideration with the case to be reheard in full on the merits we took the view that it was for us at the stage two hearing looking at all of the evidence in the round to decide (inter alia) whether the Amnesty International document did in fact provide corroboration of the Appellant's claim.
24. Following the hearing on 21st August 2006 the matter was considered on the papers for directions. The Designated Immigration Judge directed that copies of the determination of Senior Immigration Judge Latter ("the pink form") should be sent to both parties. It appears that this was not done and we handed a further copy of the pink form to Counsel for the Appellant at the hearing before us. We gave him adequate time to read it in order to prepare any further submissions he might wish to make arising therefrom.
25. The matter was listed for hearing on 9th November 2006 approximately 2½ months after the hearing before Senior Immigration Judge Latter. Nevertheless the Appellant's new and third firm of solicitors Messrs Clore and Co wrote to the court on 3rd November 2006, six days before the hearing asking for an adjournment "as there are psychological issues that require updated evidence". They said they were having problems with obtaining a report from a psychiatrist who had been on holiday. They referred to having used the doctor before. Although they did not specify who the doctor was it appeared not to have been either of the two doctors who had seen the Appellant previously. The letter stated that they asked for the matter to be adjourned "So that we can obtain the relevant medical evidence that we require. We believe that this will advance the case as this will confirm issues that were raised before and also provide an update of our client's current medical situation."
26. It was not possible to tell from that letter how a further adjournment for a further medical report would advance the case in anyway. The Appellant already had two reports apparently obtained independently of each other, confirming the Appellant's psychiatric state and it was not clear how the commission of a third report would assist the court with the issues to be decided. It was also the case that the Appellant and his representatives had had a very long time indeed to obtain such evidence if it was to be relevant and to be used. Accordingly when the matter was referred to me on the papers the court refused the application for the adjournment as the Appellant has had ample time to prepare his case.

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27. When the matter came before us on 9th November 2006, there was no renewal of that request for an adjournment and the matter proceeded. At the hearing before us the Respondent through the Home Office Presenting Officer indicated that in the light of the case of KX if the Tribunal were to find the Appellant credible and accept his account of being a Roma in a mixed marriage with an Albanian required to return to Southern Serbia he would have a well-founded fear of persecution. It was the Respondent's position that the Appellant was not telling the truth in his account and that therefore credibility was the principal issue in the case.

The Appellant's Claim

28. The Appellant and his wife attended court and gave oral testimony through the Albanian interpreter. Both were examined and cross-examined but neither were re-examined. There were no other live witnesses and in particular we did not hear evidence from the Appellant's cousin.
29. The Appellant claims to have a well-founded fear of persecution on the basis that he claims to be a citizen of Serbia and to be of ethnic Roma origins. He claims to have been arrested and ill-treated by members of the Serbian armed forces and that he also took part in attacks against Albanians living in southern Serbia in the Presevo Valley area when he was an auxiliary in the Serbian forces. The Appellant claims that he does not know the details of his wife's claim for asylum. The Respondent takes issue with the Appellant's credibility although accepts that if the Appellant is who he says he is, he would be entitled to succeed in a claim for asylum. In particular the Respondent does not now accept that the Appellant is of Roma ethnicity an issue that was taken against the Appellant in the determination of Mr Manuell which is the subject of these reconsideration proceedings. The Appellant was therefore on notice as a result of that determination and his proceedings that his ethnicity is under challenge notwithstanding that there is no challenge to the Appellant's ethnicity in the reasons for refusal letter dated 4th July 2002.
30. The reasons for refusal letter discussed the risk to the appellant on the basis that if he were a Roma it would still be safe for him to return. The letter referred to a law on the protection of rights and freedoms of national minorities in Serbia which designated the Roma community as a national minority in Serbia. This had led to positive discussions between Roma leaders, Serbian government representatives and the Organisation for Security and Co-operation in Europe. There were said to be two small Roma parties in Serbia and one of the four deputy officials in a town called Kragujevac was a Roma. However the Respondent has resiled from that position in the light of the decision of KX and no longer seeks to argue that a Roma returned to Serbia particularly in a mixed marriage would escape persecution.

The decision in KX

31. KX is a an explanation by the panel at Field House following the Court of Appeal decision in the case of Januzi. The head note to KX states:-

"Where there is a visible difference in skin colour and the Roma partner speaks no or accented Albanian, Roma Albanian mixed marriages and relationships akin to marriage in Serbia and Montenegro put both parties at risk. The country background evidence now distinguishes between the risk to Roma and their

partners who remain at risk because they are perceived by the Albanian community as traitors and Serb collaborators and Ashkaelia and Egyptians whose position is not as serious.

Roma Albanian couples cannot access the protection either of the Roma enclaves or the Albanian community and unless either party will normally be perceived as a member of the other community the parties to such a relationship are at general risk of persecution or serious harm from individuals in both communities because the risk is from non-State actors and there is in general insufficient protection from either Serbia and Montenegro (Kosovo) State bodies or from K-FOR and other NGOs."

32. The Appellant's case is also put on the basis that he is in a mixed marriage because he claims to be of Roma ethnicity and his wife is Albanian. Her mother had married again to a Serb military official who then killed the Appellant's mother-in-law.
33. There were said to be a number of factors in the decision in KX which put the Appellant in that case at risk. The principal Appellant was of Albanian ethnicity and appearance and his wife was a Roma gypsy "both by ethnicity and appearance". The Respondent did not dispute the wife's ethnicity in KX. The panel went on to say at paragraph 13 of the wife "she is a Roma woman, with an obviously Roma appearance and accent". If returned the couple would have returned to Kosovo. It is important to note that KX is a case on Kosovo not southern Serbia. However in the light of the concession made by the Respondent that the situation for mixed marriages would be the same in the Presagevo Valley in southern Serbia as it would be according to KX in Kosovo, it is not open to us to go behind that concession for the purposes of this determination. However nothing we say in this determination should be taken as in any way undermining the normal rule that each case should be determined on its own merits and facts. We are plainly not in a position to lay down country guidance on the position of alleged mixed marriages in southern Serbia.
34. In KX the panel went on to comment on the Court of Appeal decision in Hysi by saying that decision did not assist them with the difficulties faced by the Appellant KX and his wife "who cannot pass as a couple in either of their original ethnic groups because of their obvious difference in skin tone and linguistic differences".
35. The panel concluded at paragraph 70(5) "Roma do not usual speak Albanian and when they do it will be accented. Having regard to skin colour differences and differences of accent, it would be extremely unusual for a Roma woman to be perceived from her physical appearance and language abilities as Albanian or an Albanian man be perceived as Roma".
36. The panel also went on to say that risk of harm to Roma came not from the State or its agents but rather from the ordinary population of Kosovo which the State was unable to control. This appears to impliedly except at least part of the argument made by the respondent in the reasons for refusal letter in the instant case before us. The Serbian authorities had taken some steps to improve the position of Roma. They could not apparently influence the behaviour of Serbian citizens who might nevertheless inflict harm upon ethnic Roma citizens. There was no viable internal relocation option because the mixed relationship couple could not access the Roma enclaves for protection or look to the Albanian community for shelter unless one of

them could pass as a member of the other community on sight and when speaking. The test was not whether they could only pass as a member of the other community with significant effort and deceit but:-

"Whether an ordinary member of the community in which the person wishes to be perceived as belonging would not notice that they were a member of the other community."

The Appellant's evidence

37. According to the Appellant's statement made on 22nd May 2002 shortly after making his claim for asylum, he was born on 8th May 1983 in Rahovce in Presheve in the former Republic of Yugoslavia which is now Serbia. The Appellant claimed to be a Roma gypsy. He said his father was a blacksmith who owned his own workshop. He was unable to complete his schooling because of ill-treatment by the majority of students in the school who were ethnic Albanians and who treated him badly because he was a Roma gypsy. His family were unable to obtain assistance from the authorities for these problems.
38. The Appellant stated that he was a member of a band playing the drums. They would play on various occasions such as wedding celebrations or ceremonies. There were occasions when he was playing in the band when the band were not paid. This was because when people found out "we were gypsies [they] would not pay us". The Appellant claimed that he only played in Albanian villages in and around where he lived in the Presheve Valley. In our view it is implausible to suggest that in those circumstances people booking his band would not know that they were gypsies until they arrived and would then refuse to pay them. The Appellant in oral testimony said that he was playing in the band from 1992 until 1999 and gave during that period approximately 50 to 60 performances. This raised the question why if the Appellant was having so many difficulties because he and his fellow band members were of Roma ethnicity they were having so many bookings over this period. Furthermore it raised the question why they were asked to play at events which were so important to the Albanian population such as weddings. The Appellant did not answer this question directly when it was put to him in cross-examination saying that "we had to make our living we had to eat we had to earn money to send money home". When asked how his band were able to get bookings if the Albanian communities did not like "all-Roma" bands the Appellant replied "It was a tradition in my culture, we always did a lot of partying so that's why they liked that side of us".
39. Whilst the issue of the Appellant's musical background does not go to the core of his claim, we find it to be an illustration of the implausibility of the Appellant's claim of having been discriminated against on the grounds of alleged Roma ethnicity. The Appellant claims to have been playing a very large number of times over a very long period in a relatively confined area and yet people did not know that he was in an all-Roma band until he and his fellow musicians arrived and then would refuse to pay them. We did not find that to be plausible and we found it to be an example of the Appellant embroidering his account in order to appear to have been from a minority that had always been discriminated against.
40. The Appellant stated that he met his wife Anila during his time working as a drummer in the band that is to say between the period 1992 to 1999. In the determination of

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Mr O'Brien reciting the Appellant's wife's evidence she put matters rather differently to how the Appellant put it in his first statement. He records the Appellant's wife stating that in about 2000 to 2001 she, the Appellant's wife began associating with the daughter of the Appellant's maternal uncle "and eventually she got to know [the Appellant] very well".

41. The Appellant said that he attempted to ask his wife to be to go out with him but "she refused as I was a gypsy. It was because of the colour of my skin that I was not accepted by Albanians or Serbians".
42. On the question of the Appellant's skin colour we would note at this stage that we were not aware of anything which obviously gave the Appellant an appearance of having Roma ethnicity such as was evidently the case in the panel decision of KX. In this connection we note what the Designated Immigration Judge at the previous hearing noted:

"The Appellant...lacked any classically or typically Roma features such as a strongly olive complexion, black hair and dark eyes. The Appellant offered no proof to the required standard of reasonable likelihood that his family name was distinctively Roma or that he spoke Roma or observed Roma customs. He claimed that his clothing was Roma in style but that was not demonstrated at the Tribunal".

"In my view his appearance was not distinctive in any way, he would attract no special notice and he would pass for any northern European."

43. We note that the Appellant has not called any evidence in support of his contention that he is of Roma ethnicity notwithstanding that it was clearly put in issue in the Designated Immigration Judge's decision. That part of the determination was not specifically criticised or overruled in the determination prepared by the Senior Immigration Judge. Although the Appellant has produced what is described as an experts report on this case from Mr James Korovilas', this report is woefully lacking on this crucial area. It does not appear that Mr Korovilas has ever met or talked with the Appellant and so cannot comment from his own knowledge on what kind of an accent the Appellant has when speaking Albanian. It would have been a relatively simple matter for Mr Korovilas to have met and discussed the Appellant's claim briefly with him but for whatever reason he has chosen not to do so. Mr Korovilas comments about ethnic Roma in the Presevo region in Serbia that "it is difficult to conceal their ethnic identity. Ethnic Albanians and ethnic Serbs are said to be very aware of people's ethnicity and therefore it would be unreasonable to expect your client to be able to conceal his ethnicity should he be returned to Preshevo".
44. He then goes on to give his personal experience of this matter saying "It has become clear to me that ethnic Albanians and ethnic Serbs will invariably claim that they can identify ethnic Roma, either by their accent or by the colour of their skin. The fact that Roma have a different accent is generally accepted".
45. In a curious passage in his report Mr Korovilas then goes on to say that there is no support from authoritative academic studies that Roma do in fact have a different colour skin to Albanians and Serbs because such research "is avoided by academics

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since it is highly controversial and not considered an appropriate subject for investigation".

46. No justification for this extraordinary statement is provided by Mr Korovilas. This court is very well used to receiving reports from experts on the subject's ethnicity which deals with their accent, their appearance, their cultural knowledge and other relevant factors. There has never been a suggestion before that such research is in anyway inappropriate. We do not accept this explanation from Mr Korovilas. In our view this remark undermined the credibility that we could place on his report. If there are a number of ways that ethnic Roma can be distinguished from the Albanian population and Mr Korovilas is an expert in such an area it would have been relatively straightforward for him to have met with the Appellant to discuss the matter and explain in what ways he found the Appellant to be ethnic Roma. He has not done this preferring instead to merely read the papers and accepting the statement that the Appellant is an ethnic Roma. He has then sought to hide his lack of investigations in this matter behind a statement that research into ethnicity is not appropriate.
47. We found this to undermine Mr Korovilas' report and we found that we could place no reliance on it. The burden of proof, to the lower standard, is on the Appellant to prove the facts of his case. One of those facts is what is his ethnicity.
48. The Appellant claims to have a cousin in the United Kingdom. This cousin was not mentioned in the first statement of 22nd May 2002 but made an appearance at a later date in his account. In particular in his statement of 8th February 2005 in anticipation of the hearing before Designated Immigration Judge Manuell, he said his only surviving relative in the United Kingdom was his cousin "Aishe Shabani". He said that her asylum claim was allowed on the basis of her mixed race origin. She was said to have arrived in the United Kingdom a year before the Appellant. Explaining however why she was unable to attend court and give evidence to the Designated Immigration Judge the Appellant said "she has recently had a baby. The baby is ill which is why she has not attended to provide support to the application."
49. The hearing before Mr Manuell took place on 21st April 2005, some two months after that statement was written and even if the Appellant's cousin had had a baby she would by that stage have been well enough to attend court to give evidence. It is noticeable however that that cousin has never made a statement nor was she called to give evidence before us. It could not and was not argued that she was unable to attend court to give evidence to us some 21 months after giving birth. We formed the view that the cousin is a fiction invented by the Appellant to suggest support for his assertion that he was of Roma ethnicity but his inability to substantiate the point by calling the witness undermined his credibility.
50. The Appellant's problems with the Serb authorities began he says in July 2000 when Serb soldiers entered his house by force. In his statement he was very precise about this incident stating "fifteen soldiers came to our house". In oral testimony he said he had been able to count them notwithstanding the confusion that must have been caused by an armed group who as he put it in his statement "smashed down my door".

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51. The Appellant stated that the Serb soldiers wanted to interrogate him about an pro-Albanian militia the UCPMB who were contesting Serb rule. When the Appellant told the soldiers he knew nothing about this matter they began to beat him. They said they wanted him to work for them to gather intelligence on the UCPMB. In his statement he said that they took him to the military barracks where "I felt like a slave". "I asked questions like why they had taken me and why I can't go home and I was instructed that I was there to help them."
52. The Appellant was not consistent on this point art not being able to leave the barracks when he came to give his oral testimony to us. In oral testimony he said he was in fact allowed home once every ten or twenty days when he would be allowed home for the night. The Appellant attempted to explain this apparent contradiction at paragraph 35 in his statement when he said that he knew that if he did not return the following day the authorities would come looking for him. If however they were concerned that he might run away, it was implausible that they would have let him go home to his family at all let alone as frequently as he stated in cross-examination that they did.
53. The Appellant was asked in cross-examination why the Serb authorities would expect him an ethnic Roma to have information about an organisation of Albanians that hated him as much as the Serb authorities did. The Appellant replied "They thought I might know where they [the UCPMB] got their food from where they stayed". That may well have been what the Serb authorities wanted to know, but it did not answer the question why they thought the Appellant would know it. When asked again why the Serb military authorities would think he might have access to that kind of information the Appellant replied he did not know.
54. In our view it is not surprising that the Appellant did not know the answer to that question since we found it highly implausible that the Serb authorities would expect the Appellant to have such information about an organisation that was so deeply hostile to ethnic Roma. On the appellant's case he was obviously Roma and would be known as such by the UCPMB who therefore had no reason to trust him to enable him to get close enough to obtain the information. In our view this undermined the credibility of this passage of the Appellant's account.
55. In his statement the Appellant went onto describe how he travelled with Serb soldiers by lorry, it appears within the Presevo Valley area and never into Kosovo. The houses of local Albanian citizens would often be burned and robbed and any surviving civilians would also be robbed of their possessions. The Appellant claimed to have witnessed atrocities committed by the Serb soldiers and to have taken part in the burial of bodies sometimes whilst the person was still alive.
56. The Appellant said that in May 2001 an agreement was reached between the Serbian army and the Albanians. The Appellant said he did not know the conditions but he was happy that he was allowed to go home. According to paragraph S.6.67 of the CIPU:-

"In May 2001 the UCPMB accepted an amnesty from the Serb authorities...The organisation handed over significant quantities of weapons, disbanded and withdrew from the Presevo area. The former Republic of Yugoslavia Assembly passed the amnesty law for persons suspected of committing terrorist acts in

southern Serbia and the Humanitarian Law Centre confirmed in 2002 that that amnesty had been implemented correctly."

57. Following the amnesty the Serb authorities undertook to implement a series of confidence building measures in southern Serbia making the ethnic balance of those employed in State services reflect that of the population of the area and guaranteeing ethnic Albanians an appropriate level of representation in municipal councils and assemblies. The police force became ethnically mixed and there was economic regeneration of the area including the repair of all Albanian houses to accommodate displaced Albanians who wished to return to the area. According to the United Nations High Commission for Refugees significant progress was made in many areas of the implementation of this plan. (Paragraph S.6.69).
58. The CIPU quoting from various documents such as the report from the Humanitarian Law Centre, the Helsinki Group Report of October 2004 and Amnesty International states that there are still examples of discrimination such as in the re-housing of Roma and in access to education resources although there are now discussions between Roma leaders, government representatives and the Organisation for Security Co-operation in Europe ways in which the situation for Roma might be improved (S.6.84).
59. Interestingly at paragraph S.6.87 the CIPU quotes a BBC report that cases of mixed marriages were of concern to German human rights activists:-

"The Serbian government's response is reported as legally speaking its not formal discrimination but a social problem. Their rights are fully recognised but not fully implemented...The report ends with the returned Roma family complaining of the Serbian government's incapacity to assist in their particular plight."
60. Whilst no doubt distressing for that family concerned, this is not on the same level as the ill-treatment referred to in the case of ~~KX~~ referring to Kosovo and does raise a question mark over the Home Office decision in the instant case before us to make the concession that they did.
61. The Appellant said that once the Albanian population began to return to their villages after the ceasefire he began to receive threats and he spent the majority of his time at his uncle's place in Muhovc where his wife came from. On 10th November 2001 he said he was arrested by Serbian police and detained for six hours because they thought "I might have heard something from the Albanians". He said he was ill-treated during this interrogation but released.
62. It may well be that the Appellant's account of atrocities in the Presevo Valley in the run up to the amnesty in May 2001 is consistent with the events described in the objective material. However we found to be implausible the Appellant's claim that he was still being arrested and ill-treated by the Serbian authorities after the ceasefire because they wished to force him to spy on the Albanians. On his evidence he was now well-known by the Albanians as one of their persecutors. We found this to be a further example of the Appellant embroidering his account as he went along. The Appellant's claims of ill-treatment by the Serb authorities in attempting to force him to

spy on the Albanians appear to be at variance with the attempts to normalise relations between the Serbs and the Albanians as described in the objective material.

63. There is then a gap in the Appellant's account until April 2002 when he was detained again. This time he says that he was raped by a Serbian police officer and that he was detained for thirteen days and "eleven of these days this man violently raped me". Although at paragraph 47 of the Appellant's statement he says he wishes to seek medical assistance to help him deal with this incident, the Appellant has never submitted any medical evidence showing any kind of physical examination of himself to confirm any of these allegations of serious sexual ill-treatment. No satisfactory explanation has been provided for this failure to obtain this evidence. It is noteworthy that the letter requesting an adjournment of the hearing before us did not indicate that the Appellant was attempting to seek medical evidence of physical injuries but only referred to psychological matters.
64. It was argued by the Appellant's Counsel before us that it was not obligatory for the Appellant to obtain such evidence as it might be considered abusive if he had to have a further medical examination in this respect.
65. We disagree. The burden of proof is on the Appellant to establish his case to the lower standard and that means putting forward such evidence as is necessary to prove his case. There are doctors available who have the skill and expertise to appropriately examine victims who claim to have been seriously tortured. It cannot be argued as we pointed out to Counsel for the Appellant that doctors in the United Kingdom practice torture on their patients. In our view the Appellant has not sought to provide such evidence because there is none because he is unable to corroborate his claim of ill-treatment.
66. The Appellant claimed that after being released from this detention he went home to find his house burnt down and his father hanged. This event was said to have occurred on 21st April 2002. Notwithstanding the trauma that the Appellant had apparently been through in being sexually abused over a number of days, discovering his house burnt down and his father murdered, the appellant decided to get married on the 26th of April 2002. In connection with the death of his father we note that his first statement does not speculate as to whether his father committed suicide or was deliberately hanged but by the time the Appellant came to make his statement on 25th October 2006 he was able to be more definite stating "my father was killed".
67. The Appellant stated that he had not had contact with his mother since he left Serbia having been reunited with her after the discovery of his father's body. He claims to have attempted to write letters to her (suggesting that his education is more extensive than his statement claims it to be) but has had no response. The Appellant was able to leave Serbia due to the intervention of a person he described as "an old gypsy man who was a distant relative of my uncle". The uncle in question was a wealthy man notwithstanding the Appellant's claim that the family were ill-treated because of their Roma ethnicity as the uncle was able to raise 4,000 euros at short notice to pay for the Appellant and his wife to leave Serbia. Given such a network in the family, it is reasonable to assume that the Appellant's mother would have made rather more efforts to either have left Serbia herself or to have remained in contact with the Appellant. There is no suggestion that the Presevo area does not have a

functioning telephone system, but the Appellant instead says that he has had no news from his mother. We do not accept this, in our view the Appellant appeared to have made very few efforts to establish contacts with his mother. This was an attempt by the Appellant to block off any further questions on why if he the Appellant was so persecuted in the Presheve area his mother was able to continue to live there. We did not accept the Appellant's evidence on his inability to maintain contact with his mother to be credible.

68. Notwithstanding that the Appellant had been released from a harrowing captivity on 21st April and notwithstanding that on the same day he found his father's dead body hanging from his own workshop, the Appellant decided to marry on 26th April 2002, some five days later. The Appellant and his wife exchanged vows and rings in a simple ceremony and four days later left the area by car with an agent to Montenegro. The Appellant claimed to be unable to remember details of that journey stating that he had never been out of the Presheve Valley area either when he was playing as a musician or in assisting the Serbian military or otherwise.
69. We did not consider that the Appellant was being frank with us about his journey to the United Kingdom and again formed a view that he was seeking to block off further questions.
70. It is interesting to compare the Appellant's account of this part of the journey with what was recorded by the adjudicator Mr O'Brien as the wife's evidence on this point. In his first statement the Appellant said "I contacted Anila, I had already decided to leave and I knew that she wanted my help to leave the country as well. I informed her of what happened". However in evidence to Mr O'Brien matters were put differently. The adjudicator recorded:-

"She pleaded with [the Appellant] to help her and they decided to elope and flee the country."

71. We next heard evidence from the Appellant's wife who stated that her husband's appearance was distinctively Roma:-

"Because of his accent he doesn't speak in the same accent as we do, as far as his looks he has darker hair, thicker eyebrows, the skin and they dress differently".

We have already noted above that to a casual observer that is not the case, not to us nor to Designated Immigration Judge Manuell.

72. The Appellant's wife's claim that the Appellant speaks in a different accent, (or alternatively as it was put later on in her evidence in a different dialect) has never been objectively tested. It also raises the issue of how the Appellant and his wife communicate with each other if he is speaking a different dialect to her. She said that they speak to each other in standard Albanian. This is understandable given that the Appellant would have been brought up with a largely Albanian community but it does not demonstrate that the Appellant has ever been able to speak a different dialect spoken by another ethnic group such as Roma.

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73. She confirmed what was in the medical reports that her husband had bad dreams, he screamed and shouted at night and sleepwalked. Yet she had never asked him what was the cause of these psychological symptoms. She replied "He doesn't ask me either when I have bad dreams myself."
74. We also considered the two medical reports prepared for this case. Both appeared to have been very heavily reliant on information given to the doctors by the Appellant. In particular Dr Aldouri in the first of the two reports took extensively from the Appellant's first statement. He records that he spoke to the Appellant through an interpreter but does not record in which language that consultation took place. Like Dr Hajioff who prepared a report three years later he did not discuss with the Appellant the fact that the Appellant's wife did not know about the details of what had happened to the Appellant. No explanation was given by either doctor for this omission. Dr Aldouri referred to the Appellant as having symptoms of post traumatic stress. The Appellant would require professional help to come to terms with this and it would take several months to resolve. He also referred to the Appellant having support from friends in the Bounds Green area of London but did not consider whether the Appellant's wife was able to give assistance to the Appellant and if not why not. It is not clear from either psychiatrist that they were in fact told by the Appellant that he had not discussed his case with his wife. We found this to be a serious omission which undermined the usefulness of either report. The Appellant was describing extreme symptoms both in his evidence and in the reports of the doctors and yet his wife appeared to be entirely ignorant of the cause of these problems. She seems apparently to have had no desire to assist the Appellant by helping to understand where these problems had come from. Either the doctors did not know about this or they thought it not worthy of mention.
75. We note the Designated Immigration Judge's comments at paragraph 47 of his determination:-

"[The Appellant's wife's] evidence was put in terms of extreme ill-treatment of a predominantly sexual kind in a manner which might be thought to broadly parallel that of the Appellant, that is by reference to violent and degrading abuse with murder for good measure. These are subjects that most people find highly distasteful and difficult to discuss. Such extreme suffering, if true, might be thought to have united them, yet they claim to be largely ignorant of each other's story. That two people should claim to have suffered so badly in broadly similar terms is in my view a remarkable coincidence. It is wholly improbable in my judgment that they could each be unaware of the others story if they genuinely have the long standing relationship of mutual attraction across a cultural divide which they claim."

The Appellant has never produced any evidence to show that he has in fact been to any form of counselling as is suggested in the medical reports that he needs.

76. Whilst it is the case that the Designated Immigration Judge's determination was sent for reconsideration to the hearing before us, this does not mean to say that if a pertinent issue is raised in a case it should be swept aside merely because it was part of an earlier determination. At no point has the paragraph we quote above from Judge Manuell's determination been overturned or indeed criticised by the Senior Immigration Judge. What Judge Latter was concerned about was that Judge

Manuell was evidently quoting from aspects of the Appellant's wife's evidence without the Appellant's Counsel having the opportunity of commenting on it. However as we point out above, it is not the case that the Appellant's solicitors or his Counsel are in ignorance of what the Appellant's wife's claim is nor what was in the determination in her case. Indeed before us the Appellant's Counsel specifically referred to the Appellant's wife's determination as being a corroboration of the Appellant's claim.

77. The point being made by Judge Manuell in his determination is that it is such a strange combination of factors that it is highly improbable that the parties would not have sought to comfort each other in a very difficult situation they found themselves in. Instead they both maintain that they have not done this. Furthermore as we point out above it is highly improbable that an experienced and competent psychiatrist would not have wished to explore such an important part of the matter. The fact that neither psychiatrist in this case did so in our view lends credence to the idea that neither of the psychiatric reports were in fact detailed or indeed represented any kind of serious analysis of the psychiatric issues in this case.

Conclusions Relating to the Refugee Convention

78. We do not find the Appellant to be a credible witness. His account is riddled with inconsistencies and implausibilities which we have set out at some length above. The evidence he puts forward in the form of the two psychiatric reports and Mr Korovilas' report do not in our view in any way take this case any further. Indeed the omissions and unsatisfactory nature of these three documents merely serves to further undermine the Appellant's credibility.
79. The other piece of evidence which Senior Immigration Judge Latter was concerned might serve as corroboration for the Appellant's claim is the letter from Amnesty International which we have set out in extract form above. In our view this letter does not assist the Appellant either. Amnesty International quite properly state that they cannot comment on the Appellant's credibility. All they can say is that the account given by the Appellant is in line with matters reported in the objective material. This however does not mean that the Appellant's attempt to say that he was involved in these events is true. It merely means that it is another piece of evidence to be weighed in the balance with all of the other remaining pieces. If the Appellant is not credible the fact that he has woven into his account factual matters such as the fact that there was an Amnesty for the Albanian Paramilitary Group the UPCMB in May 2001 does not prove to the lower standard that the Appellant is telling us the truth.
80. In our view the Appellant cannot make out his case to the lower standard that he is of Roma ethnicity. This issue was at the forefront of Mr Manuell's determination and the Appellant was therefore aware that the burden was on him to prove to the lower standard that he was ethnically Roma. He has taken no steps to do this and instead has produced an expert's report which brushes aside this major question in a way we find wholly unacceptable.
81. When deciding the wife's claim the Adjudicator accepted that she was born on 28th April 1986 thus making her 16 at the time of the appeal. The adjudicator further found there were substantial grounds for believing the Appellant's wife's account of her ill-treatment but that if returned to Serbia she could relocate to somewhere other than

the Presevo Valley and that it would not be unduly harsh for her to be required to do so. Accordingly the appeal under the Human Rights Convention was dismissed as she could not show substantial grounds for fearing ill-treatment contrary to the Convention because she could internally relocate. It is accepted that the Appellant's wife's case would have to be considered differently now following the decision of KX which would suggest that some of the requirements that the Appellant's wife would have to have undergone to survive by way of relocation would not now be considered to be reasonable steps.

82. It is further submitted on the Appellant's behalf that as his wife was found to be credible by the previous Adjudicator that is powerful evidence on the Appellant's behalf. In this connection we refer again to paragraph 9 of Senior Immigration Judge Latter's determination where he states that the relevance of the determination in the wife's appeal "was likely to be limited in the light of the guidelines in AS and AA". That case makes clear that each case is to be determined on its own facts and one cannot apply a principle similar to *res judicata* when determining another person's appeal. In any event we have had the benefit which the previous adjudicator did not have of being able to consider the husband's evidence in much greater depth.
83. What then is the position with regard to the Appellant's ethnicity? It is not of course for us to speculate on what ethnicity the Appellant might be notwithstanding that he appears to be able to speak standard Albanian with his wife who is unquestionably Albanian. There is no evidence to suggest that his appearance or other aspects of him in any way demonstrate that he is from the Roma community. Rather we would say that where someone is comprehensively disbelieved as is the case here with this Appellant, the Appellant cannot demonstrate to the lower standard that he is of Roma ethnicity and cannot therefore demonstrate that he is at risk or a member of a group which is at risk. We would draw an analogy with the case of NM a case involving consideration of minority clans in Somalia where Mr Justice Ouseley stated that where a person was disbelieved in their account of being a member of a minority clan, that person would be taken to be a member of a majority clan who was unable to substantiate their account. That was a case on Somalia and this case is to do with Serbia, but we consider that the analogy is an apposite one to make. In our view the Appellant cannot demonstrate that he is from a persecuted minority and therefore if returned to Serbia, (assuming that the Appellant could show to the lower standard that he was from Serbia) he would be a member of a social group that is not at risk of persecution. We say "assuming that he can show that he is from southern Serbia" because given that we have disbelieved so much of the Appellant's account in so many important material respects, we have no confidence that he has told us the truth about where or which country he in fact comes from. However that is not a matter for us to speculate on but is no doubt a matter for the Respondent to consider if and when the Respondent decides to enforce any removal directions in this case. We do not find that the Appellant is able to show any reason which engages the Refugee Convention and we therefore dismiss the appeal on asylum grounds.

Conclusions relating to the claim for Humanitarian Protection

84. As we do not find the Appellant has a valid claim for protection as a refugee it is necessary for us to go on to consider whether the Appellant has a claim for Humanitarian protection. For the reasons we set out above in relation to asylum and below in relation to Article 3 of the Human Rights Convention, we do not find the

Appellant has any valid claim to such protection. There is no substantive difference in this case between the Appellant's claim under the Refugee Convention, the Human Rights Convention and under paragraph 339C of the Immigration Rules (which deals with claims for Humanitarian Protection). We do not find the Appellant can show substantial grounds for belief that he would face a real risk of suffering serious harm if returned to Serbia.

Conclusions relating to the Human Rights Convention

85. Certain of the conclusions which we have set out above apply equally here. In particular because we did not find the Appellant to have a well-founded fear of persecution, we do not find that he is able to show to the lower standard that if so returned to his country of origin, he would suffer ill-treatment contrary to Article 3. The Appellant's claim under the Human Rights Convention stands or falls with his claim under the Refugee Convention.
86. The Appellant makes a claim under Article 8. He does this on two bases. The first is that he claims to have established a private and family life with his wife in the United Kingdom since arriving here some four years ago and that it would be an interference with that private and family life by requiring the couple to return to their country of origin.
87. However such an interference would be proportionate as being in accordance with immigration law and Rules and there is nothing truly exceptional about private and family life which the couple have established in this country such that to interfere with it would be disproportionate it within the principles laid down in the case of Huang.
88. The Appellant's wife's claim was dismissed. She was not found to be at risk of persecution in Serbia and there are therefore no insurmountable obstacles to them returning as a couple to their country of origin.
89. The second basis for the Appellant's claim under Article 8 is that he claims to require psychiatric treatment which according to Mr Korovilas he would not receive adequately in Serbia as he would be discriminated against because of his ethnicity. We do not accept that there is a need for the Appellant to receive such treatment. Given the lack of evidence which the Appellant has produced about counselling and the evident lack of curiosity which his wife has in his condition, and the lack of assistance we received from the medical reports we do not find that the Appellant is able to show to the lower standard that he is in need of such medical treatment. We do not accept his evidence as to what his claimed symptoms are.
90. Secondly Mr Korovilas' report is based on the assumption that the Appellant is of Roma ethnicity. We do not accept that he is and therefore Mr Korovilas' conclusions that the Appellant would be discriminated against because of his Roma origin are not well-founded. Even if the Appellant were able to show to the lower standard that he required some form of medical intervention, it is clear from the objective material that facilities exist in Serbia. Further they would be available to both the appellant and his wife. In the circumstances we do not find that the Appellant is able to show any reason why engages the Human Rights Convention and we therefore dismiss the appeal on human rights grounds.

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DIRECTION AS TO COSTS

As there was found to be a material error of law in the determination of Designated Immigration Judge Manuell, we direct that the costs of the Appellant's solicitors and counsel in respect of the appeal against that decision and in respect of the hearing in front of us be paid out of the Legal Aid common fund.

DECISION

We dismiss the appeal on asylum grounds.

We dismiss the appeal on humanitarian protection grounds.

We dismiss the appeal on human rights grounds

Signed

Dated this 7th day of December 2006

Designated Immigration Judge Woodcraft

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